

## 1 SENATE BILL NO. 17

2 INTRODUCED BY KEATING

3

4 A BILL FOR AN ACT ENTITLED: "AN ACT DIRECTING THE DEPARTMENT OF HEALTH AND  
5 ENVIRONMENTAL SCIENCES TO TREAT HIV INFECTION IN THE SAME MANNER AS OTHER  
6 COMMUNICABLE AND SEXUALLY TRANSMITTED DISEASES; REMOVING THE WRITTEN INFORMED  
7 CONSENT REQUIREMENT FROM THE AIDS PREVENTION ACT; PROVIDING FOR EXCEPTIONS FROM  
8 KNOWLEDGE AND CONSENT REQUIREMENTS; PROVIDING THAT THE DEPARTMENT OF HEALTH AND  
9 ENVIRONMENTAL SCIENCES IS RESPONSIBLE FOR NOTIFYING POTENTIAL CONTACTS; AND AMENDING  
10 SECTIONS 50-16-1003, 50-16-1007, AND 50-16-1009, MCA."

11

12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

13

14 **NEW SECTION. Section 1. AIDS, HIV-related conditions, and HIV infection to be treated as other**  
15 **communicable diseases.** It is the intent of the legislature to treat AIDS, HIV-related conditions, and HIV  
16 infection in the same manner as other communicable and sexually transmitted diseases with regard to  
17 testing, reporting, partner notification, and disease intervention. The department shall adopt rules, as  
18 provided in 50-1-202, to reflect this policy.

19

20 **Section 2.** Section 50-16-1003, MCA, is amended to read:21 **"50-16-1003. Definitions.** As used in this part, the following definitions apply:

22 (1) "AIDS" means acquired immune deficiency syndrome as further defined by the department in  
23 accordance with standards promulgated by the centers for disease control of the United States public health  
24 service.

25 (2) "Contact" means:

26 (a) an individual identified by the subject of an HIV-related test as a past or present sexual partner  
27 or as a person with whom the subject has shared hypodermic needles or syringes; or

28 (b) any other person who has been exposed to the test subject in a manner, voluntary or  
29 involuntary, that may allow HIV transmission in accordance with modes of transmission recognized by the  
30 centers for disease control of the United States public health service.

1 (3) "Department" means the department of health and environmental sciences provided for in  
2 2-15-2101.

3 (4) "Health care facility" means a health care institution, private or public, including but not limited  
4 to a hospital, nursing home, clinic, blood bank, blood center, sperm bank, or laboratory.

5 (5) "Health care provider" means a person who is licensed, certified, or otherwise authorized by  
6 the laws of this state to provide health care in the ordinary course of business or practice of a profession.  
7 The term does not include a person who provides health care solely through the sale or dispensing of drugs  
8 or medical devices.

9 (6) "HIV" means the human immunodeficiency virus, identified as the causative agent of AIDS, and  
10 all HIV and HIV-related viruses that damage the cellular branch of the human immune or neurological  
11 systems and leave the infected person immunodeficient or neurologically impaired.

12 (7) "HIV-related condition" means a chronic disease resulting from infection with HIV, including  
13 but not limited to AIDS and asymptomatic seropositivity for HIV.

14 (8) "HIV-related test" means a test approved by the federal food and drug administration, including  
15 but not limited to an enzyme immunoassay and a western blot, that is designed to detect the presence of  
16 HIV or antibodies to HIV.

17 (9) "Legal guardian" means a person appointed by a court to assume legal authority for another  
18 who has been found incapacitated or, in the case of a minor, a person who has legal custody of the minor.

19 (10) "Local board" means a county, city, city-county, or district board of health.

20 (11) "Local health officer" means a county, city, city-county, or district health officer appointed by  
21 the local board.

22 (12) "Next of kin" means an individual who is a parent, adult child, grandparent, adult sibling, or  
23 legal spouse of a person.

24 (13) "Person" means an individual, corporation, organization, or other legal entity.

25 (14) "Posttest counseling" means counseling, conducted at the time that the HIV-related test results  
26 are given, and includes, at a minimum, written materials provided by the department.

27 (15) "Pretest counseling" means the provision of counseling to the subject prior to conduct of an  
28 HIV-related test, including, at a minimum, written materials developed and provided by the department.

29 (16) "Release of test results" means a written authorization for disclosure of HIV-related test results  
30 that:

1 (a) is signed and dated by the person tested or the person authorized to act for the person tested;  
2 and

3 (b) specifies the nature of the information to be disclosed and to whom disclosure is authorized.

4 (17) "Significant other" means an individual living in a current spousal relationship with another  
5 individual but who is not legally a spouse of that individual.

6 ~~(18) (a) "Written informed consent" means an agreement in writing that is freely executed by the~~  
7 ~~subject of an HIV related test, by the subject's legal guardian, or, if there is no legal guardian and the~~  
8 ~~subject is unconscious or otherwise mentally incapacitated, by the subject's next of kin, significant other,~~  
9 ~~or a person designated by the subject in hospital records to act on the subject's behalf, and that includes~~  
10 ~~at least the following:~~

11 ~~(i) an explanation of the test, including its purpose, potential uses, limitations, and the meaning of~~  
12 ~~its results;~~

13 ~~(ii) an explanation of the procedures to be followed for confidentiality, blood drawing, and~~  
14 ~~counseling, including notification that the test is voluntary and that consent may be withdrawn at any time~~  
15 ~~until the blood sample is taken;~~

16 ~~(iii) an explanation of whether and to whom the subject's name and test results may be disclosed;~~

17 ~~(iv) a statement that the test may be obtained anonymously if the subject wishes;~~

18 ~~(v) the name and address of a health care provider whom the subject approves to receive the~~  
19 ~~subject's test results and to provide the subject with posttest counseling; and~~

20 ~~(vi) if the consent is for a test being performed as part of an application for insurance, a statement~~  
21 ~~that only a positive test result will be reported to the designated health care provider and that negative test~~  
22 ~~results may be obtained by the subject from the insurance company.~~

23 ~~(b) The department shall develop a form agreement that may be used for purposes of this~~  
24 ~~subsection."~~

25  
26 **Section 3.** Section 50-16-1007, MCA, is amended to read:

27 **"50-16-1007. Testing -- counseling -- informed consent -- penalty.** (1) ~~An HIV-related test may~~  
28 ~~be ordered only by a health care provider and only after receiving the written informed consent of: Except~~  
29 ~~as provided in subsection (4), a health care provider may not test a specimen of a patient or cause a~~  
30 ~~specimen to be tested for HIV infection without the knowledge and consent of:~~

- 1 (a) the subject of the test;
- 2 (b) the subject's legal guardian;
- 3 (c) the subject's next of kin or significant other if:
- 4 (i) the subject is unconscious or otherwise mentally incapacitated;
- 5 (ii) there is no legal guardian;
- 6 (iii) there are medical indications of an HIV-related condition; and
- 7 (iv) the test is advisable in order to determine the proper course of treatment of the subject; or
- 8 (d) the subject's next of kin or significant other or the person, if any, designated by the subject
- 9 in hospital records to act on the subject's behalf if:
- 10 (i) the subject is in a hospital; and
- 11 (ii) the circumstances in subsections (1)(c)(i) through (1)(c)(iv) exist.
- 12 (2) When a health care provider orders an HIV-related test, the provider also certifies that ~~informed~~
- 13 consent has been received prior to ordering an HIV-related test.
- 14 (3) Before the subject of the test ~~executes an informed consent agreement~~ gives consent, the
- 15 health care provider ordering the test or the provider's designee ~~must~~ shall give pretest counseling to:
- 16 (a) the subject;
- 17 (b) the subject's legal guardian;
- 18 (c) the subject's next of kin or significant other if:
- 19 (i) the subject is unconscious or otherwise mentally incapacitated; and
- 20 (ii) there is no guardian; or
- 21 (d) the subject's next of kin or significant other or the person, if any, designated by the subject
- 22 in hospital records to act on the subject's behalf if:
- 23 (i) the subject is in the hospital; and
- 24 (ii) the circumstances in subsections (1)(c)(i) and (1)(c)(ii) exist.
- 25 (4) Consent need not be given:
- 26 (a) in the performance of an HIV-related test by a health care provider or health care facility that
- 27 procures, processes, distributes, or uses a human body part donated for a purpose specified under Title 72,
- 28 chapter 17, if the test is necessary to ensure medical acceptability of the gift for the purposes intended;
- 29 (b) in the performance of an HIV-related test for the purpose of research if the testing is performed
- 30 in a manner by which the identity of the test subject is not known and may not be retrieved by the

1 researcher;

2 (c) when a health care provider or a custodial employee of the department of corrections and  
3 human services is exposed to blood or other bodily fluids that may be HIV-infected;

4 (d) when a patient's medical condition is such that knowledge and consent cannot be obtained;

5 (e) when the testing is done as part of seroprevalence surveys if all personal identifiers are removed  
6 from the specimens prior to laboratory testing; or

7 (f) in the performance of an HIV-related test conducted pursuant to 50-18-107 or 50-18-108, with  
8 the exception that the pretest and posttest counseling must still be given.

9 (5) A patient tested for HIV infection without the patient's knowledge and consent must be given  
10 notice promptly, personally, and confidentially that a specimen was taken and that the result of the test  
11 may be obtained upon request of the patient.

12 ~~(4) A health care provider who does not provide HIV related tests on an anonymous basis shall~~  
13 ~~inform each person who wishes to be tested that anonymous testing is available at one of the~~  
14 ~~counseling testing sites established by the department, or elsewhere.~~

15 ~~(5)~~(6) The subject of an HIV-related test or any of the subject's representatives authorized by  
16 subsection (1) to act in the subject's stead shall designate, as part of a ~~written informed~~ the consent, a  
17 health care provider to receive the results of an HIV-related test. The designated health care provider shall  
18 inform the subject or the subject's representative of the results in person.

19 ~~(6)~~(7) At the time that the subject of a test or the subject's representative is given the test results,  
20 the health care provider or the provider's designee shall give the subject or the subject's representative  
21 posttest counseling.

22 ~~(7)~~(8) If a test is performed as part of an application for insurance, the insurance company ~~must~~  
23 shall ensure that:

24 (a) negative results can be obtained by the subject or the subject's representative upon request;  
25 and

26 (b) positive results are returned to the health care provider designated by the subject or the  
27 subject's representative.

28 ~~(8)~~(9) A minor may consent or refuse to consent to be the subject of an HIV-related test, pursuant  
29 to 41-1-402.

30 ~~(9) Subsections (1) through (6) do not apply to:~~

1           ~~(a) the performance of an HIV related test by a health care provider or health care facility that~~  
 2 ~~procures, processes, distributes, or uses a human body part donated for a purpose specified under Title 72,~~  
 3 ~~chapter 17, if the test is necessary to assure medical acceptability of the gift for the purposes intended;~~

4           ~~(b) the performance of an HIV related test for the purpose of research if the testing is performed~~  
 5 ~~in a manner by which the identity of the test subject is not known and may not be retrieved by the~~  
 6 ~~researcher;~~

7           ~~(c) the performance of an HIV related test when:~~

8           ~~(i) the subject of the test is unconscious or otherwise mentally incapacitated;~~

9           ~~(ii) there are medical indications of an HIV related condition;~~

10           ~~(iii) the test is advisable in order to determine the proper course of treatment of the subject; and~~

11           ~~(iv) none of the individuals listed in subsection (1)(b), (1)(c), or (1)(d) exists or is available within~~  
 12 ~~a reasonable time after the test is determined to be advisable; or~~

13           ~~(d) the performance of an HIV related test conducted pursuant to 50-18-107 or 50-18-108, with~~  
 14 ~~the exception that the pretest and posttest counseling must still be given.~~

15           (10) (a) If an agent or employee of a health care facility, a health care provider with privileges at  
 16 the health care facility, or a person providing emergency services who is described in 50-16-702 has been  
 17 voluntarily or involuntarily exposed to a patient in a manner that may allow infection by HIV by a mode of  
 18 transmission recognized by the centers for disease control of the United States public health service, the  
 19 physician of the patient shall, upon request of the exposed person, notify the patient of the exposure and  
 20 seek ~~written informed~~ consent in accordance with guidelines of the centers for disease control for an  
 21 HIV-related test of the patient. If ~~written informed~~ consent cannot be obtained, the health care facility, in  
 22 accordance with the infectious disease exposure guidelines of the health care facility, may, without the  
 23 consent of the patient, conduct the test on previously drawn blood or previously collected bodily fluids to  
 24 determine if the patient is in fact infected. A health care facility is not required to perform a test authorized  
 25 in this subsection. If a test is conducted pursuant to this subsection, the health care facility shall inform  
 26 the patient of the results and provide the patient with posttest counseling. The patient may not be charged  
 27 for a test performed pursuant to this subsection. The results of a test performed pursuant to this  
 28 subsection may not be made part of the patient's record and are subject to 50-16-1009(1).

29           (b) For the purposes of this subsection (10), ~~"written informed consent"~~ "consent" means an  
 30 agreement ~~in writing~~ that is freely executed, either orally or in writing, by the subject of an HIV-related test,

1 by the subject's legal guardian, or, if there is no legal guardian and the subject is incapacitated, by the  
2 subject's next of kin, significant other, or a person designated by the subject in hospital records to act on  
3 the subject's behalf.

4 (11) A knowing or purposeful violation of this section is a misdemeanor punishable by a fine of  
5 \$1,000 or imprisonment for up to 6 months, or both."

6

7 **Section 4.** Section 50-16-1009, MCA, is amended to read:

8 **"50-16-1009. Confidentiality of records -- notification of contacts -- penalty for unlawful disclosure.**

9 (1) Except as provided in subsection (2), a person may not disclose or be compelled to disclose the identity  
10 of a subject of an HIV-related test or the results of a test in a manner that permits identification of the  
11 subject of the test, except to the extent allowed under the Uniform Health Care Information Act, Title 50,  
12 chapter 16, part 5.

13 (2) A local board, local health officer, or the department may disclose the identity of the subject  
14 of an HIV-related test or the test results only to the extent allowed by the Government Health Care  
15 Information Act, Title 50, chapter 16, part 6, unless it is in possession of that information because a health  
16 care provider employed by it provided health care to the subject, in which case the Uniform Health Care  
17 Information Act governs the release of that information.

18 (3) ~~If After a health care provider informs the subject of an HIV-related test that the results are~~  
19 ~~positive and submits the report to the department, the provider department or a local health officer shall~~  
20 ~~encourage obtain from the subject to notify the names of persons who are potential contacts. If the subject~~  
21 ~~is unable or unwilling to notify all contacts, the health care provider may ask the subject to disclose~~  
22 ~~voluntarily the identities of the contacts and to authorize notification of those contacts by a health care~~  
23 ~~provider. The department or a local health officer shall notify contacts of their potential exposure. A~~  
24 ~~notification may state only that the contact may have been exposed to HIV and may not include the time~~  
25 ~~or place of possible exposure or the identity of the subject of the test. The notification must include pretest~~  
26 ~~counseling and information regarding testing.~~

27 (4) A person who discloses or compels another to disclose confidential health care information in  
28 violation of this section is guilty of a misdemeanor punishable by a fine of \$1,000 or imprisonment for 1  
29 year, or both."

30





STATE OF MONTANA - FISCAL NOTE

Fiscal Note for SB0017, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

A bill directing the Department of Health and Environmental Sciences (DHES) to treat HIV infection the same as other communicable diseases.

ASSUMPTIONS:

1. No new duties are required of the state DHES or other government entities.

FISCAL IMPACT: No fiscal impact.

Expenditures: No new expenditures will be required.

Revenues: No new revenues will be generated.

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

No impact on local revenues or expenditures.

David Lewis 1-2-95  
DAVID LEWIS, BUDGET DIRECTOR      DATE  
Office of Budget and Program Planning

Keating  
TOM KEATING, PRIMARY SPONSOR      DATE  
Fiscal Note for SB0017, as introduced

SB 17

## 1 SENATE BILL NO. 17

2 INTRODUCED BY KEATING

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4 A BILL FOR AN ACT ENTITLED: "AN ACT DIRECTING THE DEPARTMENT OF HEALTH AND  
5 ENVIRONMENTAL SCIENCES TO TREAT HIV INFECTION IN THE SAME MANNER AS OTHER  
6 COMMUNICABLE AND SEXUALLY TRANSMITTED DISEASES; REMOVING THE WRITTEN INFORMED  
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8 KNOWLEDGE AND CONSENT REQUIREMENTS; PROVIDING THAT THE ~~DEPARTMENT OF HEALTH AND~~  
9 ~~ENVIRONMENTAL SCIENCES IS RESPONSIBLE FOR NOTIFYING~~ LOCAL HEALTH OFFICER SHALL ENSURE  
10 THAT POTENTIAL CONTACTS ARE NOTIFIED; AND AMENDING SECTIONS 50-16-1003, 50-16-1007, AND  
11 50-16-1009, MCA."

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13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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15 NEW SECTION. **Section 1. AIDS, HIV-related conditions, and HIV infection to be treated as other**  
16 **communicable diseases.** It is the intent of the legislature to treat AIDS, HIV-related conditions, and HIV  
17 infection in the same manner as other communicable and sexually transmitted diseases with regard to  
18 testing, reporting, partner notification, and disease intervention. The department shall adopt rules, as  
19 provided in 50-1-202, to reflect this policy.

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24 accordance with standards promulgated by the centers for disease control of the United States public health  
25 service.

26 (2) "Contact" means:

27 (a) an individual identified by the subject of an HIV-related test as a past or present sexual partner  
28 or as a person with whom the subject has shared hypodermic needles or syringes; or

29 (b) any other person who has been exposed to the test subject in a manner, voluntary or  
30 involuntary, that may allow HIV transmission in accordance with modes of transmission recognized by the

1 centers for disease control of the United States public health service.

2 (3) "Department" means the department of health and environmental sciences provided for in  
3 2-15-2101.

4 (4) "Health care facility" means a health care institution, private or public, including but not limited  
5 to a hospital, nursing home, clinic, blood bank, blood center, sperm bank, or laboratory.

6 (5) "Health care provider" means a person who is licensed, certified, or otherwise authorized by  
7 the laws of this state to provide health care in the ordinary course of business or practice of a profession.  
8 The term does not include a person who provides health care solely through the sale or dispensing of drugs  
9 or medical devices.

10 (6) "HIV" means the human immunodeficiency virus, identified as the causative agent of AIDS, and  
11 all HIV and HIV-related viruses that damage the cellular branch of the human immune or neurological  
12 systems and leave the infected person immunodeficient or neurologically impaired.

13 (7) "HIV-related condition" means a chronic disease resulting from infection with HIV, including  
14 but not limited to AIDS and asymptomatic seropositivity for HIV.

15 (8) "HIV-related test" means a test approved by the federal food and drug administration, including  
16 but not limited to an enzyme immunoassay and a western blot, that is designed to detect the presence of  
17 HIV or antibodies to HIV.

18 (9) "Legal guardian" means a person appointed by a court to assume legal authority for another  
19 who has been found incapacitated or, in the case of a minor, a person who has legal custody of the minor.

20 (10) "Local board" means a county, city, city-county, or district board of health.

21 (11) "Local health officer" means a county, city, city-county, or district health officer appointed by  
22 the local board.

23 (12) "Next of kin" means an individual who is a parent, adult child, grandparent, adult sibling, or  
24 legal spouse of a person.

25 (13) "Person" means an individual, corporation, organization, or other legal entity.

26 (14) "Posttest counseling" means counseling, conducted at the time that the HIV-related test results  
27 are given, and includes, at a minimum, written materials provided by the department.

28 (15) "Pretest counseling" means the provision of counseling to the subject prior to conduct of an  
29 HIV-related test, including, at a minimum, written materials developed and provided by the department.

30 (16) "Release of test results" means a written authorization for disclosure of HIV-related test results

1 that:

2 (a) is signed and dated by the person tested or the person authorized to act for the person tested;

3 and

4 (b) specifies the nature of the information to be disclosed and to whom disclosure is authorized.

5 (17) "Significant other" means an individual living in a current spousal relationship with another  
6 individual but who is not legally a spouse of that individual.

7 ~~(18) (a) "Written informed consent" means an agreement in writing that is freely executed by the  
8 subject of an HIV-related test, by the subject's legal guardian, or, if there is no legal guardian and the  
9 subject is unconscious or otherwise mentally incapacitated, by the subject's next of kin, significant other,  
10 or a person designated by the subject in hospital records to act on the subject's behalf, and that includes  
11 at least the following:~~

12 ~~(i) an explanation of the test, including its purpose, potential uses, limitations, and the meaning of  
13 its results;~~

14 ~~(ii) an explanation of the procedures to be followed for confidentiality, blood drawing, and  
15 counseling, including notification that the test is voluntary and that consent may be withdrawn at any time  
16 until the blood sample is taken;~~

17 ~~(iii) an explanation of whether and to whom the subject's name and test results may be disclosed;~~

18 ~~(iv) a statement that the test may be obtained anonymously if the subject wishes;~~

19 ~~(v) the name and address of a health care provider whom the subject approves to receive the  
20 subject's test results and to provide the subject with posttest counseling; and~~

21 ~~(vi) if the consent is for a test being performed as part of an application for insurance, a statement  
22 that only a positive test result will be reported to the designated health care provider and that negative test  
23 results may be obtained by the subject from the insurance company.~~

24 ~~(b) The department shall develop a form agreement that may be used for purposes of this  
25 subsection."~~

26

27 **Section 3.** Section 50-16-1007, MCA, is amended to read:

28 **"50-16-1007. Testing -- counseling -- informed consent -- penalty.** (1) ~~An HIV-related test may~~  
29 ~~be ordered only by a health care provider and only after receiving the written informed consent of: Except~~  
30 ~~as provided in subsection (4), a health care provider may not test a specimen of a patient or cause a~~

1 specimen to be tested for HIV infection without the knowledge and consent of:

2 (a) the subject of the test;

3 (b) the subject's legal guardian;

4 (c) the subject's next of kin or significant other if:

5 (i) the subject is unconscious or otherwise mentally incapacitated;

6 (ii) there is no legal guardian;

7 (iii) there are medical indications of an HIV-related condition; and

8 (iv) the test is advisable in order to determine the proper course of treatment of the subject; or

9 (d) the subject's next of kin or significant other or the person, if any, designated by the subject

10 in hospital records to act on the subject's behalf if:

11 (i) the subject is in a hospital; and

12 (ii) the circumstances in subsections (1)(c)(i) through (1)(c)(iv) exist.

13 (2) When a health care provider orders an HIV-related test, the provider also certifies that informed  
14 consent has been received prior to ordering an HIV-related test.

15 (3) Before the subject of the test ~~executes an informed consent agreement~~ gives consent, the  
16 health care provider ordering the test or the provider's designee ~~must~~ shall give pretest counseling to:

17 (a) the subject;

18 (b) the subject's legal guardian;

19 (c) the subject's next of kin or significant other if:

20 (i) the subject is unconscious or otherwise mentally incapacitated; and

21 (ii) there is no guardian; or

22 (d) the subject's next of kin or significant other or the person, if any, designated by the subject

23 in hospital records to act on the subject's behalf if:

24 (i) the subject is in the hospital; and

25 (ii) the circumstances in subsections (1)(c)(i) and (1)(c)(ii) exist.

26 (4) Consent need not be given:

27 (a) in the performance of an HIV-related test by a health care provider or health care facility that  
28 procures, processes, distributes, or uses a human body part donated for a purpose specified under Title 72,  
29 chapter 17, if the test is necessary to ensure medical acceptability of the gift for the purposes intended;

30 (b) in the performance of an HIV-related test for the purpose of research if the testing is performed

1 in a manner by which the identity of the test subject is not known and may not be retrieved by the  
 2 researcher;

3 (c) when a health care provider or a custodial employee of the department of corrections and  
 4 human services is exposed to blood or other bodily fluids that may be HIV-infected;

5 (d) when a patient's medical condition is such that knowledge and consent cannot be obtained;

6 (e) when the testing is done as part of seroprevalence surveys if all personal identifiers are removed  
 7 from the specimens prior to laboratory testing; or

8 (f) in the performance of an HIV-related test conducted pursuant to 50-18-107 or 50-18-108, with  
 9 the exception that the pretest and posttest counseling must still be given.

10 (5) A patient tested for HIV infection without the patient's knowledge and consent must be given  
 11 notice promptly, personally, and confidentially that a specimen was taken and that the result of the test  
 12 may be obtained upon request of the patient.

13 ~~(4) A health care provider who does not provide HIV-related tests on an anonymous basis shall~~  
 14 ~~inform each person who wishes to be tested that anonymous testing is available at one of the~~  
 15 ~~counseling testing sites established by the department, or elsewhere.~~

16 (6) A HEALTH CARE PROVIDER MAY PROVIDE HIV-RELATED TESTS ON AN ANONYMOUS BASIS.

17 ~~(5)(6)(7)~~ The subject of an HIV-related test or any of the subject's representatives authorized by  
 18 subsection (1) to act in the subject's stead shall designate, as part of ~~a written informed~~ the consent, a  
 19 health care provider to receive the results of an HIV-related test. The designated health care provider shall  
 20 inform the subject or the subject's representative of the results in person.

21 ~~(6)(7)(8)~~ At the time that the subject of a test or the subject's representative is given the test  
 22 results, the health care provider or the provider's designee shall give the subject or the subject's  
 23 representative posttest counseling.

24 ~~(7)(8)(9)~~ If a test is performed as part of an application for insurance, the insurance company ~~must~~  
 25 shall ensure that:

26 (a) negative results can be obtained by the subject or the subject's representative upon request;  
 27 and

28 (b) positive results are returned to the health care provider designated by the subject or the  
 29 subject's representative.

30 ~~(8)(9)(10)~~ A minor may consent or refuse to consent to be the subject of an HIV-related test,

1 pursuant to 41-1-402.

2 ~~(9) Subsections (1) through (6) do not apply to:~~

3 ~~(a) the performance of an HIV related test by a health care provider or health care facility that~~  
 4 ~~procures, processes, distributes, or uses a human body part donated for a purpose specified under Title 72,~~  
 5 ~~chapter 17, if the test is necessary to assure medical acceptability of the gift for the purposes intended;~~

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 7 ~~in a manner by which the identity of the test subject is not known and may not be retrieved by the~~  
 8 ~~researcher;~~

9 ~~(c) the performance of an HIV related test when:~~

10 ~~(i) the subject of the test is unconscious or otherwise mentally incapacitated;~~

11 ~~(ii) there are medical indications of an HIV related condition;~~

12 ~~(iii) the test is advisable in order to determine the proper course of treatment of the subject; and~~

13 ~~(iv) none of the individuals listed in subsection (1)(b), (1)(c), or (1)(d) exists or is available within~~  
 14 ~~a reasonable time after the test is determined to be advisable; or~~

15 ~~(d) the performance of an HIV related test conducted pursuant to 50-18-107 or 50-18-108, with~~  
 16 ~~the exception that the pretest and posttest counseling must still be given.~~

17 ~~(10)~~(11) (a) If an agent or employee of a health care facility, a health care provider with privileges  
 18 at the health care facility, or a person providing emergency services who is described in 50-16-702 has  
 19 been voluntarily or involuntarily exposed to a patient in a manner that may allow infection by HIV by a  
 20 mode of transmission recognized by the centers for disease control of the United States public health  
 21 service, the physician of the patient shall, upon request of the exposed person, notify the patient of the  
 22 exposure and seek ~~written informed~~ consent in accordance with guidelines of the centers for disease control  
 23 for an HIV-related test of the patient. If ~~written informed~~ consent cannot be obtained, the health care  
 24 facility, in accordance with the infectious disease exposure guidelines of the health care facility, may,  
 25 without the consent of the patient, conduct the test on previously drawn blood or previously collected  
 26 bodily fluids to determine if the patient is in fact infected. A health care facility is not required to perform  
 27 a test authorized in this subsection. If a test is conducted pursuant to this subsection, the health care  
 28 facility shall inform the patient of the results and provide the patient with posttest counseling. The patient  
 29 may not be charged for a test performed pursuant to this subsection. The results of a test performed  
 30 pursuant to this subsection may not be made part of the patient's record and are subject to 50-16-1009(1).

1 (b) For the purposes of this subsection ~~(10) (11), "written informed consent"~~ "consent" means an  
 2 agreement ~~in writing~~ that is freely executed, either orally or in writing, by the subject of an HIV-related test,  
 3 by the subject's legal guardian, or, if there is no legal guardian and the subject is incapacitated, by the  
 4 subject's next of kin, significant other, or a person designated by the subject in hospital records to act on  
 5 the subject's behalf.

6 ~~(11)(12)~~ A knowing or purposeful violation of this section is a misdemeanor punishable by a fine  
 7 of \$1,000 or imprisonment for up to 6 months, or both."

8  
 9 **Section 4.** Section 50-16-1009, MCA, is amended to read:

10 **"50-16-1009. Confidentiality of records -- notification of contacts -- penalty for unlawful disclosure.**

11 (1) Except as provided in subsection (2), a person may not disclose or be compelled to disclose the identity  
 12 of a subject of an HIV-related test or the results of a test in a manner that permits identification of the  
 13 subject of the test, except to the extent allowed under the Uniform Health Care Information Act, Title 50,  
 14 chapter 16, part 5.

15 (2) A local board, local health officer, or the department may disclose the identity of the subject  
 16 of an HIV-related test or the test results only to the extent allowed by the Government Health Care  
 17 Information Act, Title 50, chapter 16, part 6, unless it is in possession of that information because a health  
 18 care provider employed by it provided health care to the subject, in which case the Uniform Health Care  
 19 Information Act governs the release of that information.

20 (3) ~~If~~ After a health care provider informs the subject of an HIV-related test that the results are  
 21 positive ~~and submits the report to the department, the provider department or a local health officer shall~~  
 22 encourage obtain from the subject to notify the names of persons who are potential contacts, THE HEALTH  
 23 CARE PROVIDER SHALL NOTIFY THE LOCAL HEALTH OFFICER. ~~If the subject is unable or unwilling to~~  
 24 notify all contacts, the health care provider may ask the subject to disclose voluntarily the identities of the  
 25 contacts and to authorize notification of those contacts by a health care provider. The department or a  
 26 local health officer shall notify contacts ENSURE THAT CONTACTS ARE NOTIFIED of their potential  
 27 exposure. A notification may state only that the contact may have been exposed to HIV and may not  
 28 include the time or place of possible exposure or the identity of the subject of the test. The notification  
 29 must include pretest counseling and, information regarding testing, AND APPROPRIATE FOLLOWUP FOR  
 30 PERSONS EXHIBITING HIGH-RISK BEHAVIOR.



1           (4) A person who discloses or compels another to disclose confidential health care information in  
2 violation of this section is guilty of a misdemeanor punishable by a fine of \$1,000 or imprisonment for 1  
3 year, or both."

4

5           NEW SECTION. **Section 5. Codification instruction.** [Section 1] is intended to be codified as an  
6 integral part of Title 50, chapter 16, part 10, and the provisions of Title 50, chapter 16, part 10, apply to  
7 [section 1].

8

-END-

## 1 SENATE BILL NO. 17

2 INTRODUCED BY KEATING

3

4 A BILL FOR AN ACT ENTITLED: "AN ACT DIRECTING THE DEPARTMENT OF HEALTH AND  
 5 ENVIRONMENTAL SCIENCES TO TREAT HIV INFECTION IN THE SAME MANNER AS OTHER  
 6 COMMUNICABLE AND SEXUALLY TRANSMITTED DISEASES; REMOVING THE WRITTEN INFORMED  
 7 CONSENT REQUIREMENT FROM THE AIDS PREVENTION ACT; PROVIDING FOR EXCEPTIONS FROM  
 8 KNOWLEDGE AND CONSENT REQUIREMENTS; PROVIDING THAT THE ~~DEPARTMENT OF HEALTH AND~~  
 9 ~~ENVIRONMENTAL SCIENCES IS RESPONSIBLE FOR NOTIFYING LOCAL HEALTH OFFICER SHALL ENSURE~~  
 10 THAT POTENTIAL CONTACTS ARE NOTIFIED; AND AMENDING SECTIONS 50-16-1003, 50-16-1007, AND  
 11 50-16-1009, MCA."

12

13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

14

15 NEW SECTION. **Section 1. AIDS, HIV-related conditions, and HIV infection to be treated as other**  
 16 **communicable diseases.** It is the intent of the legislature to treat AIDS, HIV-related conditions, and HIV  
 17 infection in the same manner as other communicable and sexually transmitted diseases with regard to  
 18 testing, reporting, partner notification, and disease intervention. The department shall adopt rules, as  
 19 provided in 50-1-202, to reflect this policy.

20

21 **Section 2. Section 50-16-1003, MCA, is amended to read:**22 **"50-16-1003. Definitions.** As used in this part, the following definitions apply:

23 (1) "AIDS" means acquired immune deficiency syndrome as further defined by the department in  
 24 accordance with standards promulgated by the centers for disease control of the United States public health  
 25 service.

26 (2) "Contact" means:

27 (a) an individual identified by the subject of an HIV-related test as a past or present sexual partner  
 28 or as a person with whom the subject has shared hypodermic needles or syringes; or

29 (b) any other person who has been exposed to the test subject in a manner, voluntary or  
 30 involuntary, that may allow HIV transmission in accordance with modes of transmission recognized by the

1 centers for disease control of the United States public health service.

2 (3) "Department" means the department of health and environmental sciences provided for in  
3 2-15-2101.

4 (4) "Health care facility" means a health care institution, private or public, including but not limited  
5 to a hospital, nursing home, clinic, blood bank, blood center, sperm bank, or laboratory.

6 (5) "Health care provider" means a person who is licensed, certified, or otherwise authorized by  
7 the laws of this state to provide health care in the ordinary course of business or practice of a profession.  
8 The term does not include a person who provides health care solely through the sale or dispensing of drugs  
9 or medical devices.

10 (6) "HIV" means the human immunodeficiency virus, identified as the causative agent of AIDS, and  
11 all HIV and HIV-related viruses that damage the cellular branch of the human immune or neurological  
12 systems and leave the infected person immunodeficient or neurologically impaired.

13 (7) "HIV-related condition" means a chronic disease resulting from infection with HIV, including  
14 but not limited to AIDS and asymptomatic seropositivity for HIV.

15 (8) "HIV-related test" means a test approved by the federal food and drug administration, including  
16 but not limited to an enzyme immunoassay and a western blot, that is designed to detect the presence of  
17 HIV or antibodies to HIV.

18 (9) "Legal guardian" means a person appointed by a court to assume legal authority for another  
19 who has been found incapacitated or, in the case of a minor, a person who has legal custody of the minor.

20 (10) "Local board" means a county, city, city-county, or district board of health.

21 (11) "Local health officer" means a county, city, city-county, or district health officer appointed by  
22 the local board.

23 (12) "Next of kin" means an individual who is a parent, adult child, grandparent, adult sibling, or  
24 legal spouse of a person.

25 (13) "Person" means an individual, corporation, organization, or other legal entity.

26 (14) "Posttest counseling" means counseling, conducted at the time that the HIV-related test results  
27 are given, and includes, at a minimum, written materials provided by the department.

28 (15) "Pretest counseling" means the provision of counseling to the subject prior to conduct of an  
29 HIV-related test, including, at a minimum, written materials developed and provided by the department.

30 (16) "Release of test results" means a written authorization for disclosure of HIV-related test results

1 that:

2 (a) is signed and dated by the person tested or the person authorized to act for the person tested;

3 and

4 (b) specifies the nature of the information to be disclosed and to whom disclosure is authorized.

5 (17) "Significant other" means an individual living in a current spousal relationship with another  
6 individual but who is not legally a spouse of that individual.

7 ~~(18) (a) "Written informed consent" means an agreement in writing that is freely executed by the~~  
8 ~~subject of an HIV-related test, by the subject's legal guardian, or, if there is no legal guardian and the~~  
9 ~~subject is unconscious or otherwise mentally incapacitated, by the subject's next of kin, significant other,~~  
10 ~~or a person designated by the subject in hospital records to act on the subject's behalf, and that includes~~  
11 ~~at least the following:~~

12 ~~(i) an explanation of the test, including its purpose, potential uses, limitations, and the meaning of~~  
13 ~~its results;~~

14 ~~(ii) an explanation of the procedures to be followed for confidentiality, blood drawing, and~~  
15 ~~counseling, including notification that the test is voluntary and that consent may be withdrawn at any time~~  
16 ~~until the blood sample is taken;~~

17 ~~(iii) an explanation of whether and to whom the subject's name and test results may be disclosed;~~

18 ~~(iv) a statement that the test may be obtained anonymously if the subject wishes;~~

19 ~~(v) the name and address of a health care provider whom the subject approves to receive the~~  
20 ~~subject's test results and to provide the subject with posttest counseling; and~~

21 ~~(vi) if the consent is for a test being performed as part of an application for insurance, a statement~~  
22 ~~that only a positive test result will be reported to the designated health care provider and that negative test~~  
23 ~~results may be obtained by the subject from the insurance company.~~

24 ~~(b) The department shall develop a form agreement that may be used for purposes of this~~  
25 ~~subsection."~~

26

27 **Section 3.** Section 50-16-1007, MCA, is amended to read:

28 **"50-16-1007. Testing -- counseling -- informed consent -- penalty.** (1) ~~An HIV-related test may~~  
29 ~~be ordered only by a health care provider and only after receiving the written informed consent of: Except~~  
30 ~~as provided in subsection (4), a health care provider may not test a specimen of a patient or cause a~~

1 specimen to be tested for HIV infection without the knowledge and consent of:

2 (a) the subject of the test;

3 (b) the subject's legal guardian;

4 (c) the subject's next of kin or significant other if:

5 (i) the subject is unconscious or otherwise mentally incapacitated;

6 (ii) there is no legal guardian;

7 (iii) there are medical indications of an HIV-related condition; and

8 (iv) the test is advisable in order to determine the proper course of treatment of the subject; or

9 (d) the subject's next of kin or significant other or the person, if any, designated by the subject

10 in hospital records to act on the subject's behalf if:

11 (i) the subject is in a hospital; and

12 (ii) the circumstances in subsections (1)(c)(i) through (1)(c)(iv) exist.

13 (2) When a health care provider orders an HIV-related test, the provider also certifies that ~~informed~~  
14 consent has been received prior to ordering an HIV-related test.

15 (3) Before the subject of the test ~~executes an informed consent agreement~~ gives consent, the  
16 health care provider ordering the test or the provider's designee ~~must~~ shall give pretest counseling to:

17 (a) the subject;

18 (b) the subject's legal guardian;

19 (c) the subject's next of kin or significant other if:

20 (i) the subject is unconscious or otherwise mentally incapacitated; and

21 (ii) there is no guardian; or

22 (d) the subject's next of kin or significant other or the person, if any, designated by the subject

23 in hospital records to act on the subject's behalf if:

24 (i) the subject is in the hospital; and

25 (ii) the circumstances in subsections (1)(c)(i) and (1)(c)(ii) exist.

26 (4) Consent need not be given:

27 (a) in the performance of an HIV-related test by a health care provider or health care facility that  
28 procures, processes, distributes, or uses a human body part donated for a purpose specified under Title 72,

29 chapter 17, if the test is necessary to ensure medical acceptability of the gift for the purposes intended;

30 (b) in the performance of an HIV-related test for the purpose of research if the testing is performed

1 in a manner by which the identity of the test subject is not known and may not be retrieved by the  
 2 researcher;

3 (c) when a health care provider or a custodial employee of the department of corrections and  
 4 human services is exposed to blood or other bodily fluids that may be HIV-infected;

5 (d) when a patient's medical condition is such that knowledge and consent cannot be obtained;

6 (e) when the testing is done as part of seroprevalence surveys if all personal identifiers are removed  
 7 from the specimens prior to laboratory testing; or

8 (f) in the performance of an HIV-related test conducted pursuant to 50-18-107 or 50-18-108, with  
 9 the exception that the pretest and posttest counseling must still be given.

10 (5) A patient tested for HIV infection without the patient's knowledge and consent must be given  
 11 notice promptly, personally, and confidentially that a specimen was taken and that the result of the test  
 12 may be obtained upon request of the patient.

13 ~~(4) A health care provider who does not provide HIV related tests on an anonymous basis shall~~  
 14 ~~inform each person who wishes to be tested that anonymous testing is available at one of the~~  
 15 ~~counseling testing sites established by the department, or elsewhere.~~

16 (6) A HEALTH CARE PROVIDER MAY PROVIDE HIV-RELATED TESTS ON AN ANONYMOUS BASIS.

17 ~~(5)(6)(7)~~ The subject of an HIV-related test or any of the subject's representatives authorized by  
 18 subsection (1) to act in the subject's stead shall designate, as part of ~~a written informed~~ the consent, a  
 19 health care provider to receive the results of an HIV-related test. The designated health care provider shall  
 20 inform the subject or the subject's representative of the results in person.

21 ~~(6)(7)(8)~~ At the time that the subject of a test or the subject's representative is given the test  
 22 results, the health care provider or the provider's designee shall give the subject or the subject's  
 23 representative posttest counseling.

24 ~~(7)(8)(9)~~ If a test is performed as part of an application for insurance, the insurance company ~~must~~  
 25 shall ensure that:

26 (a) negative results can be obtained by the subject or the subject's representative upon request;  
 27 and

28 (b) positive results are returned to the health care provider designated by the subject or the  
 29 subject's representative.

30 ~~(8)(9)(10)~~ A minor may consent or refuse to consent to be the subject of an HIV-related test,

1 pursuant to 41-1-402.

2 ~~(9) Subsections (1) through (6) do not apply to:~~

3 ~~(a) the performance of an HIV-related test by a health care provider or health care facility that~~  
 4 ~~procures, processes, distributes, or uses a human body part donated for a purpose specified under Title 72,~~  
 5 ~~chapter 17, if the test is necessary to assure medical acceptability of the gift for the purposes intended;~~

6 ~~(b) the performance of an HIV-related test for the purpose of research if the testing is performed~~  
 7 ~~in a manner by which the identity of the test subject is not known and may not be retrieved by the~~  
 8 ~~researcher;~~

9 ~~(c) the performance of an HIV-related test when:~~

10 ~~(i) the subject of the test is unconscious or otherwise mentally incapacitated;~~

11 ~~(ii) there are medical indications of an HIV-related condition;~~

12 ~~(iii) the test is advisable in order to determine the proper course of treatment of the subject; and~~

13 ~~(iv) none of the individuals listed in subsection (1)(b), (1)(c), or (1)(d) exists or is available within~~  
 14 ~~a reasonable time after the test is determined to be advisable; or~~

15 ~~(d) the performance of an HIV-related test conducted pursuant to 50-18-107 or 50-18-108, with~~  
 16 ~~the exception that the pretest and posttest counseling must still be given.~~

17 ~~(10)(11)~~ (a) If an agent or employee of a health care facility, a health care provider with privileges  
 18 at the health care facility, or a person providing emergency services who is described in 50-16-702 has  
 19 been voluntarily or involuntarily exposed to a patient in a manner that may allow infection by HIV by a  
 20 mode of transmission recognized by the centers for disease control of the United States public health  
 21 service, the physician of the patient shall, upon request of the exposed person, notify the patient of the  
 22 exposure and seek ~~written informed~~ consent in accordance with guidelines of the centers for disease control  
 23 for an HIV-related test of the patient. If ~~written informed~~ consent cannot be obtained, the health care  
 24 facility, in accordance with the infectious disease exposure guidelines of the health care facility, may,  
 25 without the consent of the patient, conduct the test on previously drawn blood or previously collected  
 26 bodily fluids to determine if the patient is in fact infected. A health care facility is not required to perform  
 27 a test authorized in this subsection. If a test is conducted pursuant to this subsection, the health care  
 28 facility shall inform the patient of the results and provide the patient with posttest counseling. The patient  
 29 may not be charged for a test performed pursuant to this subsection. The results of a test performed  
 30 pursuant to this subsection may not be made part of the patient's record and are subject to 50-16-1009(1).

1 (b) For the purposes of this subsection ~~(10)~~ (11), "~~written informed consent~~" "consent" means an  
 2 agreement ~~in writing~~ that is freely executed, either orally or in writing, by the subject of an HIV-related test,  
 3 by the subject's legal guardian, or, if there is no legal guardian and the subject is incapacitated, by the  
 4 subject's next of kin, significant other, or a person designated by the subject in hospital records to act on  
 5 the subject's behalf.

6 ~~(11)~~(12) A knowing or purposeful violation of this section is a misdemeanor punishable by a fine  
 7 of \$1,000 or imprisonment for up to 6 months, or both."

8  
 9 **Section 4.** Section 50-16-1009, MCA, is amended to read:

10 **"50-16-1009. Confidentiality of records -- notification of contacts -- penalty for unlawful disclosure.**

11 (1) Except as provided in subsection (2), a person may not disclose or be compelled to disclose the identity  
 12 of a subject of an HIV-related test or the results of a test in a manner that permits identification of the  
 13 subject of the test, except to the extent allowed under the Uniform Health Care Information Act, Title 50,  
 14 chapter 16, part 5.

15 (2) A local board, local health officer, or the department may disclose the identity of the subject  
 16 of an HIV-related test or the test results only to the extent allowed by the Government Health Care  
 17 Information Act, Title 50, chapter 16, part 6, unless it is in possession of that information because a health  
 18 care provider employed by it provided health care to the subject, in which case the Uniform Health Care  
 19 Information Act governs the release of that information.

20 (3) ~~If After a health care provider informs the subject of an HIV-related test that the results are~~  
 21 ~~positive and submits the report to the department, the provider department or a local health officer shall~~  
 22 ~~encourage obtain from the subject to notify the names of persons who are potential contacts, THE HEALTH~~  
 23 ~~CARE PROVIDER SHALL NOTIFY THE LOCAL HEALTH OFFICER. If the subject is unable or unwilling to~~  
 24 ~~notify all contacts, the health care provider may ask the subject to disclose voluntarily the identities of the~~  
 25 ~~contacts and to authorize notification of those contacts by a health care provider. The department or a~~  
 26 ~~local health officer shall notify contacts ENSURE THAT CONTACTS ARE NOTIFIED of their potential~~  
 27 ~~exposure. A notification may state only that the contact may have been exposed to HIV and may not~~  
 28 ~~include the time or place of possible exposure or the identity of the subject of the test. The notification~~  
 29 ~~must include pretest counseling and, information regarding testing, AND APPROPRIATE FOLLOWUP FOR~~  
 30 ~~PERSONS EXHIBITING HIGH-RISK BEHAVIOR.~~



1           (4) A person who discloses or compels another to disclose confidential health care information in  
2 violation of this section is guilty of a misdemeanor punishable by a fine of \$1,000 or imprisonment for 1  
3 year, or both."

4

5           NEW SECTION. **Section 5. Codification instruction.** [Section 1] is intended to be codified as an  
6 integral part of Title 50, chapter 16, part 10, and the provisions of Title 50, chapter 16, part 10, apply to  
7 [section 1].

8

-END-